

Docket: 71179 US03

there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations(MPEP § 2143).

Applicants maintain that there is no motivation to combine the references for the reasons already on record.

Applicants also maintain that even if the references were combined they would not teach every limitation of applicants' invention. Examiner stated in his office action that applicants' argument on this point is noted but the missing process steps, such as the liquor exchange step, is mere process optimization. In examiner's last response, Examiner writes "Examiner has noted applicants' argument. However, the solvent exchange between the oxidation and post oxidation is nothing more than optimization process in order to save an operational cost for the process." Applicants have to respectfully disagree with the examiner's contention that the missing elements are only optimization and in the knowledge of one skilled in the art for at least the following reasons.

Applicants respectfully state that just because the prior art suggests a result does not mean that it would meet the standard for a prima facie case of obviousness. In this case the two cited references teach about impurity reduction, but the references do not discuss the means used in applicants' invention, which is a liquor exchange. Zetlin et al. discloses adding water to a crystallizer, but not a liquor exchange. Scott discloses a TPA process and specifically mentions a low temperature centrifuge process. Neither reference discloses any details about the liquor exchange process of applicants'

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invention. In *re* Rockwell International Corp (147 F.3d 1358, 47 USPQ 2d 1027 (Fed Cir. 1998)) states that drawing inferences from the combined teaching of prior art is improper. It also states "because none of the cited four prior art patents alone taught a patent claim limitation, Defendants had the burden to prove that combining these references would suggest one of ordinary skill in the art how to perform the missing process step with a reasonable likelihood of success."

Therefore, the examiner has the burden to prove how combination of these references would suggest to one skilled in the art the missing process steps. As previously stated, both references cited by the examiner are completely silent on the liquor exchange method used by applicants' invention. Indeed, there is nothing in these two references that would motivate one skilled in the art to perform a high temperature liquor exchange as well as a liquor exchange between oxidation and digestion. The cited references even if combined only teach adding water to a centrifuge in the crystallizers to remove impurities.

If the examiner is taking official notice of the missing claim elements, applicants respectfully disagree. MPEP 2144.03 states "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). Therefore, if the examiner has taken this position, applicants maintain that this notice is not proper since the missing

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elements not taught by the references are not common knowledge in the art and are not capable of instant and unquestionable demonstration for at least the reasons already stated.

In summary, applicants state that the reading of the cited art would not lead one skilled in the art to perform the missing elements of the present invention, such as liquor exchange, and thus fails to meet the standard for a *prima facie* case of obviousness.

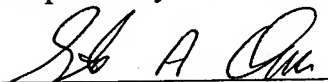
### Conclusion

The application is in condition for allowance. The Examiner is respectfully requested to reconsider the rejection(s), remove all rejections, and pass the application to issuance.

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Respectfully submitted,

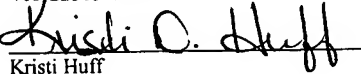


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1/26/2005  
Date

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I hereby certify that this paper (along with any paper(s) referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450.

  
Kristi Huff

1/26/05  
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